

Committee on Criminal Justice Appropriations

**Tuesday, January 12, 2006
9:00 am - 12:00 pm
214 Capitol**

**Allan Bense
Speaker**

**Gustavo Barreiro, CHAIR
Dan Gelber, Vice-Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time: Thursday, January 12, 2006 09:00 am

End Date and Time: Thursday, January 12, 2006 12:00 pm

Location: 214 Capitol

Duration: 3.00 hrs

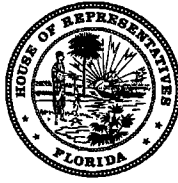
Consideration of the following bill(s):

HB 151 CS Law Enforcement by Adams

Department of Corrections Update on Health Services

Budget Workshop

NOTICE FINALIZED on 12/30/2005 14:23 by SLB



Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
THURSDAY, JANUARY 12, 2006
9:00am- 12:00pm.
214 Capitol

- I. Roll Call and opening comments by Chair Barreiro**
- II. Consideration of the following bills:**
 - HB 151 CS by Adams- Law Enforcement**
- III. Department of Corrections Update on Health Services**
- IV. Presentation by the Department of Juvenile Justice Inspector General on Miami-Dade detention center lockdown**
- V. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 CS Law Enforcement
SPONSOR(S): Adams
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Kramer	Kramer
2) Justice Appropriations Committee		Burns <i>HB</i>	DeBeaugrine
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

HB 151 amends several sections of statute relating to the Florida Department of Law Enforcement (FDLE). Most significantly, the bill:

- Requires FDLE to review its records to determine whether a person who is attempting to purchase a firearm has been adjudicated mentally defective or has been committed to a mental institution and as a result is prohibited by federal law from purchasing a firearm. Currently, FDLE does not have access to this background information. The bill requires the clerks of court to submit these records to FDLE.
- Increases the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by a state attorney or the statewide prosecutor.
- Provides immunity from civil liability for damages when an agency responds in good faith to a request to publicly release information relating to a missing child, commonly known as an Amber Alert.
- Requires each clerk of the court to submit to FDLE a disposition report for each disposition relating to a minor offender.
- Expands the list of records of criminal offenses that may not be expunged or sealed to include offenses of voyeurism and false imprisonment.
- Provides that a sealed criminal history record can be used by a criminal justice agency in conducting a criminal history background check for approval of firearms purchases as required by state or federal law.
- Authorizes FDLE to retain fingerprints of law enforcement officers (and other criminal justice agency employees if submitted by the employing agency) for the purpose of checking arrest fingerprint cards against fingerprints of officers or other criminal justice agency employees. Requires FDLE to inform an agency if an arrest record is identified as belonging to an officer or other criminal justice agency employee.
- Creates the first degree misdemeanor offense of using a name or emblem of FDLE to convey the impression that a product is approved, endorsed or authorized by FDLE.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

The bill prohibits the expunction or sealing of certain criminal history records. The bill will allow FDLE access to records indicating that someone has been committed to a mental institution for the purpose of determining whether the person is prohibited by federal law from purchasing a firearm. The bill increases the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by the state attorney or statewide prosecutor. The bill requires the clerk of court to submit disposition information to FDLE relating to minor offenders. The bill authorizes FDLE to keep fingerprints of law enforcement officers and other criminal justice agency employees on file for the purpose of checking incoming arrest information against these fingerprint records. The bill provides immunity from civil liability for damages when an agency responds in good faith to a request to publicly release information relating to a missing child, commonly known as an Amber Alert.

Promote personal responsibility

The bill will allow FDLE to determine whether a person is prohibited by federal law from purchasing a firearm based on commitment to a mental institution. The bill prohibits using the name or emblem of FDLE for improper purposes.

B. EFFECT OF PROPOSED CHANGES:

Sale and delivery of firearms (Section 1): Federal law provides that it is unlawful for any person to sell a firearm to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution.¹ Before a licensed firearm dealer can sell or deliver a firearm to another person, the dealer is required to contact the Florida Department of Law Enforcement (FDLE) who then conducts a records check on the potential buyer.² The department is required to review criminal history records to determine if the potential buyer has been convicted of a felony or other enumerated offense. The department notifies the dealer if the check of the potential buyer discloses any disqualifying information. The department does not have access to information relating to whether a potential buyer has been adjudicated mentally defective or committed to a mental institution. As such, this information is not part of the department's record check.

HB 151 amends s. 790.065, F.S. to require the department to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.³ The bill requires the clerks of court to submit these records to the department within one month of the adjudication or commitment. The bill provides a procedure by which an individual can request that the department delete a mental health record in certain circumstances. The bill authorizes the department to disclose the mental health data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose the information to the Department of Agriculture and Consumer Services for determining eligibility for issuance of a concealed weapons or firearms license. If a potential buyer appeals a non-approval based on the mental health records, the clerks of court and mental institutions must, upon request, provide information to help determine whether the potential buyer is the same person as the subject of

¹ 18 U.S.C. 922(d)(4)

² See s. 790.065, F.S.

³ The bill defines the terms "adjudicated mentally defective" and "committed to a mental institution".

the record. Any identifying information that is provided to FDLE which is confidential or exempt from disclosure, must retain such confidential or exempt status when transferred to FDLE.

Protective services for certain victims and witnesses (Section 2): Section 914.25, F.S. provides that upon certification from a state attorney or the statewide prosecutor that a victim or witness who is critical to a criminal investigation or prosecution is at risk of harm, law enforcement may provide protective services. If the victim or witness needs to be temporarily relocated, the state attorney or statewide prosecutor must notify FDLE who coordinates the temporary relocation. Protective services, including temporary relocation may be provided for up to one year or until the risk giving rise to the certification has diminished, whichever occurs sooner. The state attorney or statewide prosecutor can recertify a victim or witness at risk of harm for an additional year. The lead law enforcement agency who provides protective services may seek reimbursement for expenses from the Victim and Witness Protection Review Committee which is part of the Florida Violent Crime and Drug Control Council that serves in an advisory capacity to FDLE.⁴

HB 151 amends this section to provide that at the end of the first certification year, the prosecutor may recertify the victim at risk for an additional year or until the risk giving rise to the certification has diminished, whichever occurs first. Certification may be renewed annually to allow a maximum of 4 years of eligibility for protective services. The bill provides that the section does not prevent any agency from providing protective services at the agency's expense beyond the four year maximum period but that the agency cannot seek reimbursement for any additional expenditures from the Victim and Witness Protection Review Committee.

Missing child reports (Section 3): FDLE maintains the Missing Children Information Clearinghouse (MCIC) which is a central repository of information regarding missing children. In cooperation with several other state agencies, FDLE administers the Amber Alert program to aid in the recovery of missing children. The purpose of the program is to broadcast information to the public relating to a missing or abducted child believed to be in danger through the use of radio and television broadcasts, road signs and lottery machines. A Missing Child Alert can be issued in cases where the criteria for the issuance of an Amber Alert have not been met. Currently, there is no statutory language which governs the program.

HB 151 amends s. 937.021, F.S. which relates to missing child reports to provide that upon receiving a request to release Amber Alert or Missing Child Alert information, any agency, employee, individual or entity is immune from civil liability for damages for complying in good faith with the request. The bill also provides that a person is presumed to have acted in good faith in releasing information pertaining to the missing child. The presumption of good faith is not overcome if a technical or clerical error is made or if the alert information is incomplete because the information received from the local law enforcement agency was incomplete or incorrect. The bill further provides that there is no duty to release the alert information and the decision to release the information is discretionary with the agency receiving the information.

Trust funds (Sections 4 & 5) Section 938.07, F.S. provides that a court cost of \$135 shall be added to any fine for driving under the influence or boating under the influence. This money is statutorily divided as follows: \$25 dollars is to be deposited in the Emergency Medical Services Trust Fund; \$60 is to be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and; \$50 is to be deposited in the Criminal Justice Standards and Training Trust Fund of FDLE to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in statute.⁵ In audit report number 03-042, released in October 2002, the Auditor General reported that, contrary to section

⁴ See s. 943.031(6) which establishes the Victim and Witness Protection Review Committee within the Florida Violent Crime and Drug Control Council. The committee maintains criteria for disbursing funds to reimburse law enforcement agencies for witness protection costs and reviews and approves or denies reimbursement requests. The lead agency must provide a plan for how the funds would be distributed among any agencies that cooperated in providing protective services.

⁵ Section 943.32, F.S. establishes a statewide criminal analysis laboratory system to be composed of state operated laboratories under the jurisdiction of FDLE and locally funded laboratories in Broward, Dade, Indian River, Monroe, Palm Beach and Pinellas Counties as well as such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

938.07, F.S., FDLE was placing the \$50 portion of DUI court costs in its Operating Trust Fund rather than in the Criminal Justice Standards and Training Trust Fund. In an October 2004 audit, the Auditor General noted "continued noncompliance with this law."⁶ HB 151 provides that the \$50 to FDLE shall be deposited in FDLE's Operating Trust Fund rather than the Criminal Justice Standards and Training Trust Fund.

Section 938.27, F.S. provides that in all criminal cases, convicted persons are liable for payment of investigative costs incurred by law enforcement agencies. Investigative costs which are recovered must be returned to the agency which incurred the expense and deposited into that agency's operating trust fund. HB 151 amends this section to provide that investigative costs recovered on behalf of FDLE shall be deposited in the department's Forfeiture and Investigative Support Trust Fund established in s. 943.362, F.S.

Disposition reporting (Section 6): FDLE maintains the Criminal Justice Information Program which acts as the state's central criminal justice information repository. Law enforcement agencies are required to submit arrest information to FDLE. Section 943.052, F.S. requires each clerk of court to submit disposition information to FDLE.⁷ This information would indicate, for example, whether a person had been acquitted or convicted of the offense for which they were arrested. The section provides that disposition reports must be submitted at least once a month and provides that the report is mandatory for dispositions relating to adult offenders only. HB 151 provides that, beginning July 1, 2008, a disposition report for each disposition relating to a minor offender will be mandatory.

Name change petitions (Section 7): Section 68.07, F.S. currently provides that a petition for change of name must include a copy of the petitioner's fingerprints taken by a law enforcement agency, except where a former name is being restored. After the filing of a final judgment granting a name change, the clerk is required to send a report to the FDLE. Along with additional information, the report must contain a copy of the petitioner's fingerprints. The bill changes the references from a copy of the petitioner's fingerprints to a set of the petitioner's fingerprints.

Fingerprint submission for criminal history background checks (Sections 8 , 9, 10 and 12): Section 943.13, F.S. provides minimum qualifications for a person employed as a law enforcement or correctional officer. A person who has been convicted of any felony or a misdemeanor involving perjury or false statement is not eligible to be an officer. An employing agency is required to conduct a fingerprint based criminal history background check as a condition of employment of an officer. The employing agency keeps the processed fingerprints on file. FDLE does not retain the fingerprints. As a result, unless the agency later resubmits the fingerprints, they are not subsequently checked to ensure that the officer has not been arrested for or convicted of a disqualifying criminal offense.

HB 151 amends s. 943.13, F.S. to require that beginning January 15, 2007, FDLE must retain and enter into the statewide automated fingerprint identification system all fingerprints of officers submitted as required by this section. FDLE will then search all arrest fingerprint cards against the fingerprints of the officers submitted as required by this section and report to the employing agency if an fingerprint from an arrest card is identified as matching an officer's fingerprints. By January 1, 2008 an officer whose fingerprints are not retained by the FDLE must be re-fingerprinted and the fingerprints must be forwarded to FDLE.

⁶ See, Report No. 2005-042, Department of Law Enforcement, Criminal Justice Standards and Training Trust Fund and Accountability for Evidence and Seized Property, Operational Audit.

⁷ See also, Rule 11C-4.006, F.A.C.; Section 943.045(9), F.S. defines the term "disposition" to mean "details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions."

HB 151 amends s. 943.053, F.S. to provide that if a criminal justice agency is authorized to conduct a criminal background check on an agency employee (other than an officer), the agency may submit the employee's fingerprint identification information to FDLE who (effective January 15, 2007) will retain this information and will search all arrest fingerprint cards against the fingerprints of the agency employees as described above.

The bill also amends section 943.05, F.S., relating to the Criminal Justice Information Program to authorize the program to retain fingerprints submitted by agencies as described above. The bill also authorizes the program to search all arrest fingerprints against the fingerprints retained. Agencies wishing to participate in having the submitted fingerprints searched against arrest fingerprints will be required to pay an annual fee to the FDLE. Fees may be waived or reduced by the executive director for good cause shown. These services will be provided to criminal justice agencies for criminal justice purposes free of charge.

Criminal history check (Section 9): HB 151 amends s. 943.053, F.S. to provide that when a criminal history check or a duty to disclose the absence of criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the check must include a Florida criminal history provided by the FDLE. Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request. When a national criminal history check is required or authorized by state law, the national criminal history check must be submitted by and through the FDLE unless otherwise required by federal law. Criminal history information provided by another governmental entity of the state or a private entity cannot be substituted for criminal history information provided by the department if the check is required by statute or is made a condition of a privilege or benefit by law.

Expunction and sealing of records (Sections 10 & 11): Current law provides for sealing or expunction of criminal history records in limited circumstances. See generally, ss. 943.0585 and 943.059, F.S. The arrested individual must apply with FDLE for a certificate of eligibility for sealing or expunction and pay a \$75 fee. A record may not be sealed or expunged if the person was adjudicated guilty of the offense. Criminal history records relating to certain offenses such as sexual battery or drug trafficking may not be expunged or sealed if the defendant was found guilty or pled guilty, even if adjudication was withheld.⁸ Even if FDLE grants an individual a certificate of eligibility, sealing or expunction is not automatic - the court may deny the petition. An individual may only have one arrest (and related proceedings) sealed, and then later expunged, in his or her lifetime.

The arresting agency keeps possession of a sealed record, but the record is confidential and exempt from the public records laws.⁹ A sealed record does not appear on a criminal history search requested by a member of the public, but is still available for review by the arrested person and by certain government agencies for specific purposes. The arresting agency must physically destroy an expunged record.¹⁰ FDLE does not destroy an expunged record, but keeps a copy of the record as a confidential and exempt record.

An individual who has had an arrest sealed or expunged may lawfully deny the arrest in most circumstances. The FDLE record of an expunged criminal history record is still available to certain government entities for specific purposes.¹¹

⁸ Offenses in this category include numerous sex crimes, plus communications fraud, offenses by public employees, drug trafficking, or violation of pretrial release conditions.

⁹ Section 943.059(4), F.S.

¹⁰ Section 943.0585(4), F.S.

¹¹ A record that is sealed or expunged is provided to the appropriate state or local government agency should the arrested person apply for: employment with a criminal justice agency, admission to the Florida Bar, employment with the Department of Children and Families or the Department of Juvenile Justice if the individual will be in a sensitive position (whether employed by agency or by a contractor), or employment in a school or day care center.

HB 151 makes several changes to the statutes relating to sealing and expunging of criminal history records. The bill expands the list of offenses that cannot be sealed or expunged to include voyeurism¹² and also includes offenses specified as predicate offenses for registration as a sexual predator or a sexual offender.¹³ This will result in the offenses of false imprisonment and luring or enticing a child and certain offenses related to pornography being ineligible for sealing or expunction.

HB 151 also provides that a certificate of eligibility for sealing or expunction is valid for 12 months after the date it is issued by FDLE. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The bill also clarifies that eligibility for a renewed certification will be based on the law in effect and the status of the applicant at the time of the most recent application.

HB 151 adds to the list of exceptions to the general rule that a person may lawfully deny or fail to acknowledge arrests covered by a sealed record to include a person who is attempting to purchase a firearm and a person who is seeking authorization from a Florida seaport for employment within or access to one or more seaports. Current law provides that a sealed record can be provided to a criminal justice agency for their respective criminal justice purposes. The bill clarifies that a "criminal justice purpose" includes conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law and includes authorizing access to a seaport.

Current law provides that a person is not required to wait a minimum of 10 years prior to being eligible for an expunction when the charges were dismissed prior to trial, adjudication or withholding of adjudication. Otherwise, the criminal history record must be sealed for at least ten years before such record is eligible for expunction. HB 151 amends this criteria to provide that the department may issue a certificate of eligibility for expunction if the person has previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest were not dismissed prior to trial, regardless of whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years before expunction is permitted does not apply when a plea was not entered or all charges related to the arrest or to which the petition to expunge pertains were dismissed prior to trial. In short, under the provisions of the bill, unless the charges were dismissed prior to trial, the record cannot be expunged unless 10 years has elapsed since the record was sealed. If the person went to trial and was acquitted or if the person was convicted but adjudication was withheld or if the person pled guilty or nolo contendere and adjudication was withheld, the record must be sealed for 10 years before it can be expunged. [As under current law, a record cannot be sealed or expunged if it resulted in an adjudication of guilt either by way of a plea or after a trial.]

Providing judges with online access to criminal justice information (Section 9): The bill amends section 943.053, F.S. to provide that the department shall make online access to Florida criminal justice information available to each judge in the state courts system for the purpose of assisting judges in their case-related decision making responsibilities.

Officer training (Section 13 & 14): As a condition of employment, a law enforcement officer must complete a basic skills training program. Every 4 years, an officer is required to have 40 hours of continued training.¹⁴ Sections 943.171 through 943.17295, F.S. require training in a number of specific areas such as victims assistance, juvenile sexual offender investigations, and domestic violence cases. Section 943.1715, F.S. provides that each basic skills course must include a minimum of 8 hours training in "interpersonal skills with diverse populations." Section 943.1716, F.S. mandates that a continued education course must contain 8 hours of instruction in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences. HB 151 retains the requirement that basic skills training and continued education training contain instruction in

¹² s. 810.14, F.S.

¹³ See ss. 775.21 and 943.0435.

¹⁴ s. 943.135, F.S.

the subject of interpersonal skills relating to diverse populations but removes the requirement that a minimum of 8 hours training be given in that subject.

Criminal justice selection centers (Sections 15 & 16) Florida has selection centers throughout the state that evaluate criminal justice applicants for employment with agencies in the region. The centers are each under the direction and control of a postsecondary public school or a criminal justice agency.¹⁵ Section 943.2569, F.S. requires that each center provide for an annual financial audit and a management letter. However, a postsecondary public school or criminal justice agency that administers a center is required to conduct these annual financial audits pursuant to section 11.45(2)(c), F.S. or s. 218.39(1), F.S. A recent Auditor General report suggested that the need for a separate audit requirement in s. 943.2569, F.S. is not apparent.¹⁶ HB 151 repeals s. 943.2569, thereby deleting the separate audit requirement. The bill also amends s. 943.257, F.S. to clarify the oversight role of FDLE's Criminal Justice Standards and Training Commission and the center's advisory board over the centers.

Public assistance fraud (Section 17): Section 943.401, F.S. provides that FDLE must investigate fraud in public assistance made under the provisions of chapter 409 or 414. The references to these sections are outdated because functions that were previously handled by the Department of Health and Rehabilitative Services are now located in other state agencies that do not come under the provisions of chapter 409 or 414. The bill clarifies this reference. Currently, all public assistance recipients must first give the agency administering the assistance consent to make inquiry of past and present employers and financial records. The bill includes the Agency for Workforce Innovation in the list of agencies because this agency now administers subsidized child day care under the School Readiness program.

Purchasing promotional materials (Section 18): The bill provides that, in addition to expenditures otherwise authorized by law, the department is authorized to expend not more than \$5,000 annually to "purchase and distribute promotional materials or items that serve to advance with dignity and integrity the goodwill of this state and the department and to provide basic refreshments" at meetings of the department with representatives from other governmental entities.

Unauthorized use of FDLE emblems or names (Section 19): Section 843.085, F.S. makes it a first degree misdemeanor for an unauthorized person to wear law enforcement insignia in a manner that could deceive a reasonable person into believing that it is authorized by a law enforcement agency. The bill creates an unnumbered section of statute which provides that whoever, without the written permission of the executive director, knowingly uses the words "Florida Department of Law Enforcement", "F.D.L.E.", "FDLE", or Florida Capitol police or who uses a department logo or emblem in connection with any publication or production in a manner reasonably calculated to convey the impression that such publication or production is approved, endorsed or authorized by the department, commits a first degree misdemeanor. The bill provides that a violation of the section may be enjoined upon suit by the department or the Department of Legal Affairs upon complaint filed in any court of competent jurisdiction.

C. SECTION DIRECTORY:

Section 1: Amends s. 790.065, F.S. relating to sale and delivery of firearms to provide that FDLE will review records to determine if person has been adjudicated mentally defective or has been committed to a mental institution; requires clerks of court to submit information to FDLE.

Section 2. Amends s. 914.25, F.S. to allow for recertification that victim or witness requires protective services or relocation; provides that up to 4 years of protective services may be eligible for reimbursement.

¹⁵ s. 943.256, F.S.

¹⁶ Report No. 2005-042, pages 7-8.

Section 3. Amends s. 937.021, F.S. to provide immunity from civil liability for transmission of Amber Alert/Missing Child Alert when acting in faith; provides for presumption of good faith and that presumption is not overcome in certain circumstances; provides that section does not create a duty to release alert.

Section 4. Amends s. 938.07 to redesignate \$50 DUI court cost from Criminal Justice Standard and Training Trust Fund to Operational Trust Fund.

Section 5. Amends s. 938.27, F.S. to redesignate investigative court costs recovered on behalf of FDLE from agency operational trust fund to Forfeiture and Investigative Support Trust Fund.

Section 6. Amends s. 943.052, F.S. to require clerks of court to submit disposition reports relating to minor offenders to Criminal Justice Information Program.

Section 7: Amends s. 68.07, F.S. to clarify that change of name petitions must include an original set of the petitioner's fingerprints.

Section 8. Amends s. 943.05, F.S. to authorize Criminal Justice Information Program to retain employee fingerprints and search against arrest records.

Section 9. Amends s. 943.053, F.S. to authorize FDLE to retain fingerprints of criminal justice agency employees submitted by agency for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to agency employee.

Section 10. Amends s. 943.0585, F.S. relating to court-ordered expunction of criminal history records; prohibits expunction of certain records; provides that certificate of eligibility for expunction is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility.

Section 11. Amends s. 943.059, F.S. relating to court-ordered sealing of criminal history records; prohibiting expunction of certain records; provides that certificate of eligibility is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility; provides that sealed records can be used in conducting criminal history background check for approval of firearms purchases; provides that person may not deny or fail to acknowledge sealed record when attempting to purchase a firearm.

Section 12. Amends s. 943.13, F.S. to authorize FDLE to retain fingerprints of officers for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to officer.

Section 13. Amends s. 943.1715, F.S. to remove requirement for specific number of hours of basic skills training relating to interpersonal skills in diverse populations.

Section 14. Amends s. 943.1716, F.S. to remove requirement for specific number of hours of continued employment training relating to interpersonal skills in diverse populations.

Section 15. Repeals s. 943.2569, F.S. relating to audit of criminal justice selection centers.

Section 16. Amends s. 943.257, F.S. relating to oversight of criminal justice selection centers.

Section 17. Amends s. 943.401, F.S. to clarify FDLE's jurisdiction to investigate public assistance fraud.

Section 18. Authorizes FDLE to purchase up to \$5,000 worth of goodwill and promotional materials.

Section 19. Prohibits unauthorized use of FDLE emblem or name.

Section 20. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires the clerks of the court to provide information relating to juvenile disposition and to adjudications of mental defectiveness or commitments to mental institutions to the FDLE. This may have an indeterminate fiscal impact on the clerks of court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will require FDLE to update the Firearm Purchase Program (FPP) system to collect information submitted by the clerks of court on adjudications of mental defectiveness or commitments to mental institutions. FDLE estimates that the system will cost \$143,200 to create with an annual recurring cost of \$37,400 to maintain. According to FDLE staff, this can be accomplished within current appropriations.

FDLE also intends to charge a \$6 retention fee when an agency elects to have FDLE retain the fingerprints of non-sworn agency personnel as provided for in section 8 of the bill. FDLE does not intend to charge this fee for the retention of fingerprints of law enforcement or correctional officers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 151 requires the clerks of court to provide certain information to FDLE. Although this will increase the responsibilities of clerk staff, these duties of the clerk of the court are funded by state revenues. Accordingly, this bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds and is not a mandate.

2. Other:

Section 843.085(1), F.S. makes it a first degree misdemeanor for an unauthorized person to wear law enforcement insignia which could deceive a reasonable person into believing that it is authorized by a law enforcement agency. In Sult v. State, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that the statute was unconstitutionally overbroad. The court stated:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The "could deceive a reasonable person" element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus....section 843.085(1) is overbroad because it reaches a substantial amount of constitutionally protected conduct.

HB 151 creates an unnumbered section of statute which provides that whoever, without the written permission of the executive director, knowingly uses the words "Florida Department of Law Enforcement", "F.D.L.E.", "FDLE", or Florida Capitol police or who uses a department logo or emblem in connection with any publication or production *in a manner reasonably calculated to convey the impression* that such publication or production is approved, endorsed or authorized by the department, commits a first degree misdemeanor. This language may be distinguishable from the language struck down by the Sult court because it provides that the use of the words or emblem must be in a manner *reasonably calculated* to convey the impression that such publication is approved by the department.

B. RULE-MAKING AUTHORITY:

The bill amends s. 943.05, F.S. to require the department to adopt a rule setting the amount of the annual fee to be imposed upon an agency who wishes to have the FDLE search submitted fingerprints against arrest fingerprints.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill authorizes FDLE to disclose to federal agencies and agencies of other states certain court records data pertaining to the mental health of the subject of the data. The data may be disclosed exclusively for use in determining the lawfulness of a firearm sale or transfer. The bill authorizes such disclosure although much of the information may already be public record. From the language of the bill, it is unclear exactly what kind of court orders would be collected by FDLE and placed in its database, and it is therefore unclear whether the data to be collected is confidential and exempt from public records laws. According to the staff of the Attorney General's Office, there may be some difference of opinion among the Florida District Courts of Appeal about what mental health records of the clerks of court are or are not confidential and exempt. According to FDLE, in order to implement the provisions of Section 1, the department will seek an opinion of the Attorney General to clarify which clerk of court records are confidential and exempt, and which ones are not, and to also clarify how those records may be handled by the department once collected. The language of this bill does not appear to create a new public records exemption.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Criminal Justice Committee adopted one amendment authorizing FDLE to retain fingerprints submitted by criminal and noncriminal justice agencies for criminal history background screening in a manner provided by law rather than in a manner provided by rule.

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CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to law enforcement; amending s. 790.065, F.S.; requiring the Department of Law Enforcement to review other records in addition to criminal history records to evaluate a potential buyer or transferee of a firearm, including an adjudication of mental defectiveness or a commitment to a mental institution as criteria that prohibit a person from purchasing a firearm; providing definitions; requiring the department to maintain an automated database of persons who are prohibited from purchasing a firearm; requiring each clerk of court to submit certain court records to the department within a certain period; requiring the department to delete certain records from the automated database upon the request of an individual meeting specified conditions; authorizing the department to disclose collected data to other federal or state agencies with regard to the sale or transfer of a firearm; authorizing the department to disclose certain information to the Department of Agriculture and Consumer

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24 Services for determining the eligibility of an applicant
25 for a concealed weapons or concealed firearms license;
26 requiring the clerk of court or mental hospital to provide
27 additional information upon request following an appeal of
28 an unapproved sale or transfer of a firearm; amending s.
29 914.25, F.S.; providing for recertification for protective
30 services for an additional period, with reimbursement for
31 expenses from the Victim and Witness Protection Review
32 Committee; providing for unlimited protective services for
33 a victim or witness without reimbursement; amending s.
34 937.021, F.S.; providing immunity to the Department of Law
35 Enforcement, other law enforcement agencies, and media
36 representatives from civil liability for complying in good
37 faith with a request to record or report information of an
38 Amber Alert or Missing Child Alert; providing that a
39 technical or clerical error or incorrect or incomplete
40 information does not overcome the presumption of good
41 faith in reporting information about an Amber Alert or
42 Missing Child Alert; providing that it is a discretionary
43 decision to report, record, or display Amber Alert or
44 Missing Child Alert information received from the local
45 law enforcement agency having jurisdiction; amending s.
46 938.07, F.S.; requiring that a portion of certain court
47 costs imposed for a conviction of driving or boating under
48 the influence be deposited into the Operating Trust Fund
49 of the Department of Law Enforcement instead of the
50 Criminal Justice Standards and Training Trust Fund;
51 amending s. 938.27, F.S.; requiring that investigative

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52 costs recovered on behalf of the Department of Law
53 Enforcement be deposited into the department's Forfeiture
54 and Investigative Trust Fund; amending s. 943.052, F.S.;
55 requiring that disposition reports for dispositions
56 relating to minor offenders are mandatory after a
57 specified date; amending s. 68.07, F.S.; requiring a set
58 of fingerprints as part of a name change petition;
59 amending s. 943.05, F.S.; authorizing the Department of
60 Law Enforcement to retain fingerprints in certain
61 circumstances and use retained fingerprints for certain
62 purposes; providing for an annual fee; providing for
63 waiver of the fee for good cause shown; providing for free
64 services for certain purposes; amending s. 943.053, F.S.;
65 requiring the department to make certain information
66 available to judges; limiting use of information;
67 authorizing a criminal justice agency to obtain a criminal
68 history background check of a noncertified agency employee
69 by submitting fingerprints to the department; requiring
70 that the criminal history check be provided by the
71 department in certain circumstances; amending s. 943.0585,
72 F.S.; prohibiting a court from expunging a criminal
73 history record containing certain sexual offenses or
74 certain offenses that require registration as a sexual
75 offender; requiring a valid certificate of eligibility for
76 expunction in a petition to expunge a criminal history
77 record; specifying the time during which a certificate of
78 eligibility for expunction is valid; requiring that a
79 trial may not have occurred in order for a person to

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80 | obtain a statement from the state attorney authorizing the
81 | expunction of a criminal record; authorizing a person who
82 | has secured a prior sealing of a criminal history record
83 | to seek a certificate of eligibility for expunction if the
84 | criminal history record was previously sealed for a
85 | certain number of years and is otherwise eligible for
86 | expunction; providing that a person who is seeking
87 | authorization for employment within or access to a seaport
88 | may not deny or fail to acknowledge arrests covered by
89 | expunged records; providing that the department may
90 | acknowledge expunged criminal history records under
91 | certain circumstances; prohibiting seaport employees from
92 | disclosing expunged criminal history record information
93 | except to certain persons; providing penalties; amending
94 | s. 943.059, F.S.; enumerating certain sexual offenses and
95 | offenses that require registration as a sexual offender
96 | which may not be sealed; requiring a valid certificate of
97 | eligibility for sealing in a petition to seal a criminal
98 | history record; specifying the period during which a
99 | certificate of eligibility for sealing is valid; providing
100 | that the information contained in a sealed criminal record
101 | is available to a criminal justice agency for the purpose
102 | of conducting a criminal history background check for
103 | approval of a firearms purchase or transfer; prohibiting a
104 | person from denying arrests covered by his or her sealed
105 | criminal record when attempting to purchase a firearm;
106 | providing that a person who is seeking authorization for
107 | employment within or access to a seaport may not deny or

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108 fail to acknowledge arrests covered by sealed records;
109 providing that the department may acknowledge sealed
110 criminal history records under certain circumstances;
111 prohibiting seaport employees from disclosing sealed
112 criminal history record information except to certain
113 persons; providing penalties; amending s. 943.13, F.S.;
114 requiring the department to enter law enforcement,
115 correctional, and correctional probation officers'
116 fingerprints into a statewide automated fingerprint
117 identification system; requiring the department to search
118 each arrest fingerprint card received against fingerprints
119 retained in the statewide automated fingerprint
120 identification system; providing for refingerprinting by a
121 certain date; amending ss. 943.1715 and 943.1716, F.S.;
122 deleting the minimum number of hours required for basic
123 skills training and continued employment training relating
124 to diverse populations for law enforcement, correctional,
125 and correctional probation officers; repealing s.
126 943.2569, F.S., relating to an annual financial audit of
127 criminal justice selection centers; amending s. 943.257,
128 F.S.; authorizing the Criminal Justice Standards and
129 Training Commission and the advisory board of a criminal
130 justice selection center to inspect and copy any documents
131 from a center in order to carry out oversight
132 responsibilities, including documents pertaining to any
133 internal or independent audits; amending s. 943.401, F.S.;
134 requiring the department to investigate all public
135 assistance that is provided by the state; requiring public

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assistance recipients to consent in writing to an investigation into their employment and financial histories by the Agency for Workforce Innovation; requiring the department to report the results of the investigations to the Agency for Workforce Innovation; authorizing the department to purchase goodwill and promotional materials; limiting the annual amount of such expenditures; prohibiting the unauthorized use of the department's emblems and names; providing a penalty; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective February 1, 2007, paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.--

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review criminal history records and other records that have been provided to the department to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

~~or~~

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164 3. Has had adjudication of guilt withheld or imposition of
165 sentence suspended on any felony or misdemeanor crime of
166 domestic violence unless 3 years have elapsed since probation or
167 any other conditions set by the court have been fulfilled or
168 expunction has occurred; ~~or-~~

169 4. Has been adjudicated mentally defective or has been
170 committed to a mental institution by a court and as a result is
171 prohibited by federal law from purchasing a firearm.

172 a. As used in this subparagraph, "adjudicated mentally
173 defective" means a determination by a court that a person, as a
174 result of marked subnormal intelligence, or mental illness,
175 incompetency, condition, or disease, is a danger to himself or
176 herself or to others or lacks the mental capacity to contract or
177 manage his or her own affairs. The phrase shall include a
178 judicial finding of incapacity under s. 744.331(6)(a), an
179 acquittal by reason of insanity of a person charged with a
180 criminal offense, and a judicial finding that a criminal
181 defendant is not competent to stand trial.

182 b. As used in this subparagraph, "committed to a mental
183 institution" means involuntary commitment, commitment for mental
184 defectiveness or mental illness, and commitment for substance
185 abuse. The phrase shall include involuntary inpatient placement
186 as defined in s. 394.467, involuntary assessment and
187 stabilization under s. 397.6818, and involuntary substance abuse
188 treatment under s. 397.6957, but shall not include a person in a
189 mental institution for observation or discharged from a mental
190 institution based upon the initial review by the physician or a
191 voluntary admission to a mental institution.

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192 c. In order to check for these conditions, the department
193 shall compile and maintain an automated database of persons who
194 are prohibited from purchasing a firearm based on court records
195 of adjudications of mental defectiveness or commitments to
196 mental institutions. Clerks of court are required to submit
197 these records to the department within 1 month after the
198 rendition of the adjudication or commitment. Reports may be
199 submitted in an automated format. The reports must, at a
200 minimum, include the name, along with any known alias or former
201 name, the sex, and the date of birth of the subject. The
202 department shall delete any mental health record from the
203 database upon request of an individual when 5 years have elapsed
204 since the individual's restoration to capacity by court order
205 after being adjudicated an incapacitated person under s.
206 744.331, or similar laws of any other state; or, in the case of
207 an individual who was previously committed to a mental
208 institution under chapter 394, or similar laws of any other
209 state, when the individual produces a certificate from a
210 licensed psychiatrist that he or she has not suffered from
211 disability for at least 5 years prior to the date of request for
212 removal of the record. Where the department has received a
213 subsequent record of an adjudication of mental defectiveness or
214 commitment to a mental institution for such individual, the 5-
215 year timeframe shall be calculated from the most recent
216 adjudication of incapacitation or commitment.

217 d. The department is authorized to disclose the collected
218 data to agencies of the Federal Government and other states for
219 use exclusively in determining the lawfulness of a firearm sale

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or transfer. The department is also authorized to disclose any
applicable collected data to the Department of Agriculture and
Consumer Services for determination of eligibility for issuance
of a concealed weapons or concealed firearms license upon
receipt of an applicant fingerprint submission forwarded
pursuant to s. 790.06(6)(a). When a potential buyer or
transferee appeals a nonapproval based on these records, the
clerks of court and mental institutions shall, upon request by
the department, provide information to help determine whether
the potential buyer or transferee is the same person as the
subject of the record. Photographs and any other data that could
confirm or negate identity must be made available to the
department for such purposes, notwithstanding any other
provision of state law to the contrary. Any such information
that is made confidential or exempt from disclosure by law shall
retain such confidential or exempt status when transferred to
the department.

Section 2. Subsections (4) and (5) of section 914.25,
 Florida Statutes, are amended to read:

914.25 Protective services for certain victims and
 witnesses.--

(4)(a) When a victim or witness is certified as provided
 in subsection (3), a law enforcement agency, in consultation
 with the certifying state attorney or the statewide prosecutor,
 may provide appropriate protective services. If a victim or
 witness needs to be temporarily relocated, the statewide
 prosecutor or the state attorney must notify the Department of
 Law Enforcement. The Department of Law Enforcement, in

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consultation with the statewide prosecutor or the state attorney, and any other law enforcement agency involved in the criminal investigation or prosecution, shall coordinate the temporary relocation of the victim or witness.

(b) Protective services, including temporary relocation services, may initially be provided for up to 1 year or until the risk giving rise to the certification has diminished, whichever occurs sooner. ~~If deemed necessary,~~ The statewide prosecutor or the state attorney may, at the end of the certification year, recertify a victim or witness at risk of harm for an additional period of up to 1 year or until the risk giving rise to the certification has diminished, whichever occurs first. A victim or witness at risk of harm may be certified and recertified annually as provided in this section to provide a maximum of 4 years of eligibility for protective services.

(5) The lead law enforcement agency that provides protective services, as authorized in this section, may seek reimbursement for its reasonable expenses from the Victim and Witness Protection Review Committee, pursuant to ~~the provisions~~ of s. 943.031. This section does not prevent any law enforcement agency from providing protective services at the agency's expense beyond the 4-year maximum period established in this section. Any such additional expenditures for protective services are not eligible for the reimbursement provided in this section.

Section 3. Subsection (3) is added to section 937.021, Florida Statutes, to read:

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937.021 Missing child reports.--

(3) (a) Upon receiving a request to record, report, transmit, display, or release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing or endangered child, the Department of Law Enforcement as the state Amber Alert coordinator; any state or local law enforcement agency and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Amber Alert or Missing Child Alert information pertaining to such child.

(b) The presumption of good faith is not overcome if a technical or clerical error is made by any such agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the Amber Alert or Missing Child Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.

(c) Neither this subsection nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert or Missing Child Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity

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304 receiving that information from the local law enforcement agency
305 having jurisdiction.

306 Section 4. Section 938.07, Florida Statutes, is amended to
307 read:

308 938.07 Driving or boating under the
309 influence.--Notwithstanding any other provision of s. 316.193 or
310 s. 327.35, a court cost of \$135 shall be added to any fine
311 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall
312 remit the funds to the Department of Revenue, \$25 of which shall
313 be deposited in the Emergency Medical Services Trust Fund, \$50
314 shall be deposited in the Operating Criminal Justice Standards
315 and Training Trust Fund of the Department of Law Enforcement to
316 be used for operational expenses in conducting the statewide
317 criminal analysis laboratory system established in s. 943.32,
318 and \$60 shall be deposited in the Brain and Spinal Cord Injury
319 Rehabilitation Trust Fund created in s. 381.79.

320 Section 5. Subsection (7) of section 938.27, Florida
321 Statutes, is amended to read:

322 938.27 Judgment for costs on conviction.--

323 (7) Investigative costs that ~~which~~ are recovered shall be
324 returned to the appropriate investigative agency that ~~which~~
325 incurred the expense. Such costs ~~shall~~ include actual expenses
326 incurred in conducting the investigation and prosecution of the
327 criminal case; however, costs may also include the salaries of
328 permanent employees. Any investigative costs recovered on behalf
329 of a state agency must be remitted to the Department of Revenue
330 for deposit in the agency operating trust fund, and a report of
331 the payment must be sent to the agency, except that any

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332 | investigative costs recovered on behalf of the Department of Law
333 | Enforcement shall be deposited in the department's Forfeiture
334 | and Investigative Support Trust Fund under s. 943.362.

335 | Section 6. Subsection (2) of section 943.052, Florida
336 | Statutes, is amended to read:

337 | 943.052 Disposition reporting.--The Criminal Justice
338 | Information Program shall, by rule, establish procedures and a
339 | format for each criminal justice agency to monitor its records
340 | and submit reports, as provided by this section, to the program.
341 | The disposition report shall be developed by the program and
342 | shall include the offender-based transaction system number.

343 | (2) Each clerk of the court shall submit the uniform
344 | dispositions to the program or in a manner acceptable to the
345 | program. The report shall be submitted at least once a month
346 | and, when acceptable by the program, may be submitted in an
347 | automated format. The disposition report is mandatory for
348 | dispositions relating to adult offenders only. Beginning July 1,
349 | 2008, a disposition report for each disposition relating to a
350 | minor offender is mandatory.

351 | Section 7. Subsections (2) and (5) of section 68.07,
352 | Florida Statutes, are amended to read:

353 | 68.07 Change of name.--

354 | (2) The petition shall include a set ~~copy~~ of the
355 | petitioner's fingerprints taken by a law enforcement agency
356 | except where a former name is being restored and be verified and
357 | show:

358 | (a) That petitioner is a bona fide resident of and
359 | domiciled in the county where the change of name is sought.

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(b) If known, the date and place of birth of petitioner, petitioner's father's name, mother's maiden name, and where petitioner has resided since birth.

(c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.

(f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.

(h) Whether petitioner has ever been arrested for or charged with, pled guilty or nolo contendere to, or been found to have committed a criminal offense, regardless of adjudication, and if so, when and where.

(i) Whether any money judgment has ever been entered against petitioner and if so, the name of the judgment creditor,

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the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.

(j) That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark, or otherwise.

(k) That the petitioner's civil rights have never been suspended, or if the petitioner's civil rights have been suspended, that full restoration of civil rights has occurred.

(5) The clerk must, upon the filing of the final judgment, send a report of the judgment to the Department of Law Enforcement on a form to be furnished by that department. The Department of Law Enforcement must send a copy of the report to the Department of Highway Safety and Motor Vehicles, which may be delivered by electronic transmission. The report must contain sufficient information to identify the petitioner, including a set copy of the petitioner's fingerprints taken by a law enforcement agency, the new name of the petitioner, and the file number of the judgment. Any information retained by the Department of Law Enforcement and the Department of Highway Safety and Motor Vehicles may be revised or supplemented by said departments to reflect changes made by the final judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information

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415 related to the petitioner. Any costs associated with
416 fingerprinting must be paid by the petitioner.

417 Section 8. Paragraphs (g) and (h) are added to subsection
418 (2) of section 943.05, Florida Statutes, to read:

419 943.05 Criminal Justice Information Program; duties; crime
420 reports.--

421 (2) The program shall:

422 (g) As authorized by law, retain fingerprints submitted by
423 criminal and noncriminal justice agencies to the department for
424 a criminal history background screening in a manner provided by
425 law and enter the fingerprints in the statewide automated
426 fingerprint identification system authorized by paragraph (b).
427 Such fingerprints shall thereafter be available for all purposes
428 and uses authorized for arrest fingerprint cards entered into
429 the statewide automated fingerprint identification system
430 pursuant to s. 943.051.

431 (h)1. As authorized by law, search all arrest fingerprint
432 cards received under s. 943.051 against the fingerprints
433 retained in the statewide automated fingerprint identification
434 system under paragraph (g). Any arrest record that is identified
435 with the retained fingerprints of a person subject to background
436 screening as provided in paragraph (g) shall be reported to the
437 appropriate agency.

438 2. Agencies may participate in this search process by
439 payment of an annual fee to the department and by informing the
440 department of any change in the affiliation, employment, or
441 contractual status or place of affiliation, employment, or
442 contracting of the persons whose fingerprints are retained under

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paragraph (g). The department shall adopt a rule setting the
amount of the annual fee to be imposed upon each participating
agency for performing these searches and establishing the
procedures for the retention of fingerprints and the
dissemination of search results. The fee may be borne as
provided by law. Fees may be waived or reduced by the executive
director for good cause shown. Consistent with the recognition
of criminal justice agencies expressed in s. 943.053(3), these
services will be provided to criminal justice agencies for
criminal justice purposes free of charge.

Section 9. Subsections (5) through (9) of section 943.053,
Florida Statutes, are renumbered as subsections (6) through
(10), respectively, and new subsections (5), (11), and (12) are
added to that section, to read:

943.053 Dissemination of criminal justice information;
fees.--

(5) Notwithstanding the provisions of s. 943.0525, and any
user agreements adopted pursuant thereto, and notwithstanding
the confidentiality of sealed records as provided for in s.
943.059, the department shall make online access to Florida
criminal justice information available to each judge in the
state courts system for the purpose of assisting judges in their
case-related decisionmaking responsibilities. Such online access
shall be provided without charge to the state courts system.
Sealed records received by the courts under this section remain
confidential and exempt from the provisions of s. 119.07(1). The
information provided pursuant to this section shall not take the
place of any information required to be provided to the courts

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by any other agency or entity. Information provided under this section shall be used only for the official court business for which it was requested and may not be further disseminated.

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. Effective January 15, 2007, the fingerprints submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint cards for which submitted fingerprints may be used, any arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

(12) Notwithstanding any other provision of law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the

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referenced criminal history check, whether it is an initial or
renewal check, shall include a Florida criminal history provided
by the department as set forth in this section. Such Florida
criminal history information may be provided by a private vendor
only if that information is directly obtained from the
department for each request. When a national criminal history
check is required or authorized by state law, the national
criminal history check shall be submitted by and through the
department in the manner established by the department for such
checks, unless otherwise required by federal law. The fee for
criminal history information as established by state law or, in
the case of national checks, by the Federal Government, shall be
borne by the person or entity submitting the request, or as
provided by law. Criminal history information provided by any
other governmental entity of this state or any private entity
shall not be substituted for criminal history information
provided by the department when the criminal history check or a
duty to disclose the absence of a criminal history check is
required by statute or is made a condition of a privilege or
benefit by law.

Section 10. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by

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527 | this section. Any court of competent jurisdiction may order a
528 | criminal justice agency to expunge the criminal history record
529 | of a minor or an adult who complies with the requirements of
530 | this section. The court shall not order a criminal justice
531 | agency to expunge a criminal history record until the person
532 | seeking to expunge a criminal history record has applied for and
533 | received a certificate of eligibility for expunction pursuant to
534 | subsection (2). A criminal history record that relates to a
535 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
536 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
537 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
538 | 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,
539 | or any violation specified as a predicate offense for
540 | registration as a sexual predator pursuant to s. 775.21, without
541 | regard to whether that offense alone is sufficient to require
542 | such registration, or for registration as a sexual offender
543 | pursuant to s. 943.0435, may not be expunged, without regard to
544 | whether adjudication was withheld, if the defendant was found
545 | guilty of or pled guilty or nolo contendere to the offense, or
546 | if the defendant, as a minor, was found to have committed, or
547 | pled guilty or nolo contendere to committing, the offense as a
548 | delinquent act. The court may only order expunction of a
549 | criminal history record pertaining to one arrest or one incident
550 | of alleged criminal activity, except as provided in this
551 | section. The court may, at its sole discretion, order the
552 | expunction of a criminal history record pertaining to more than
553 | one arrest if the additional arrests directly relate to the
554 | original arrest. If the court intends to order the expunction of

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records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity.

Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any a felony or a misdemeanor specified in s.

943.051(3)(b).

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2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by

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611 | the department. After that time, the petitioner must reapply to
612 | the department for a new certificate of eligibility. Eligibility
613 | for a renewed certification of eligibility must be based on the
614 | status of the applicant and the law in effect at the time of the
615 | most recent application. The department shall issue a
616 | certificate of eligibility for expunction to a person who is the
617 | subject of a criminal history record if that person:

618 | (a) Has obtained, and submitted to the department, a
619 | written, certified statement from the appropriate state attorney
620 | or statewide prosecutor which indicates:

621 | 1. That an indictment, information, or other charging
622 | document was not filed or issued in the case.

623 | 2. That an indictment, information, or other charging
624 | document, if filed or issued in the case, was dismissed or nolle
625 | prosequi by the state attorney or statewide prosecutor, or was
626 | dismissed by a court of competent jurisdiction, and that none of
627 | the charges related to the arrest or alleged criminal activity
628 | to which the petition to expunge pertains resulted in a trial,
629 | without regard to whether the outcome of the trial was other
630 | than an adjudication of guilt.

631 | 3. That the criminal history record does not relate to a
632 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
633 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
634 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
635 | 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,
636 | or any violation specified as a predicate offense for
637 | registration as a sexual predator pursuant to s. 775.21, without
638 | regard to whether that offense alone is sufficient to require

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such registration, or for registration as a sexual offender
pursuant to s. 943.0435, where the defendant was found guilty
of, or pled guilty or nolo contendere to any such offense, or
that the defendant, as a minor, was found to have committed, or
pled guilty or nolo contendere to committing, such an offense as
a delinquent act, without regard to whether adjudication was
withheld.

(b) Remits a \$75 processing fee to the department for
placement in the Department of Law Enforcement Operating Trust
Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of
the disposition of the charge to which the petition to expunge
pertains.

(d) Has never, prior to the date on which the application
for a certificate of eligibility is filed, been adjudicated
guilty of a criminal offense or comparable ordinance violation,
or been adjudicated delinquent for committing any a felony or a
misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated
delinquent for committing, any of the acts stemming from the
arrest or alleged criminal activity to which the petition to
expunge pertains.

(f) Has never secured a prior sealing or expunction of a
criminal history record under this section, former s. 893.14,
former s. 901.33, or former s. 943.058, unless expunction is
sought of a criminal history record previously sealed for 10
years pursuant to paragraph (h) and the record is otherwise
eligible for expunction.

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667 (g) Is no longer under court supervision applicable to the
668 disposition of the arrest or alleged criminal activity to which
669 the petition to expunge pertains.

670 (h) Has previously obtained a court order sealing the
671 record under this section, former s. 893.14, former s. 901.33,
672 or former s. 943.058 for a minimum of 10 years because
673 adjudication was withheld or because all charges related to the
674 arrest or alleged criminal activity to which the petition to
675 expunge pertains were not dismissed prior to trial, without
676 regard to whether the outcome of the trial was other than an
677 adjudication of guilt. The requirement for the record to have
678 previously been sealed for a minimum of 10 years does not apply
679 when a plea was not entered or all charges related to the arrest
680 or alleged criminal activity to which the petition to expunge
681 pertains were dismissed prior to trial. Is not required to wait
682 a minimum of 10 years prior to being eligible for an expunction
683 of such records because all charges related to the arrest or
684 criminal activity to which the petition to expunge pertains were
685 dismissed prior to trial, adjudication, or the withholding of
686 adjudication. Otherwise, such criminal history record must be
687 sealed under this section, former s. 893.14, former s. 901.33,
688 or former s. 943.058 for at least 10 years before such record is
689 eligible for expunction.

690 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

691 (a) In judicial proceedings under this section, a copy of
692 the completed petition to expunge shall be served upon the
693 appropriate state attorney or the statewide prosecutor and upon
694 the arresting agency; however, it is not necessary to make any

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695 agency other than the state a party. The appropriate state
696 attorney or the statewide prosecutor and the arresting agency
697 may respond to the court regarding the completed petition to
698 expunge.

699 (b) If relief is granted by the court, the clerk of the
700 court shall certify copies of the order to the appropriate state
701 attorney or the statewide prosecutor and the arresting agency.
702 The arresting agency is responsible for forwarding the order to
703 any other agency to which the arresting agency disseminated the
704 criminal history record information to which the order pertains.
705 The department shall forward the order to expunge to the Federal
706 Bureau of Investigation. The clerk of the court shall certify a
707 copy of the order to any other agency which the records of the
708 court reflect has received the criminal history record from the
709 court.

710 (c) For an order to expunge entered by a court prior to
711 July 1, 1992, the department shall notify the appropriate state
712 attorney or statewide prosecutor of an order to expunge which is
713 contrary to law because the person who is the subject of the
714 record has previously been convicted of a crime or comparable
715 ordinance violation or has had a prior criminal history record
716 sealed or expunged. Upon receipt of such notice, the appropriate
717 state attorney or statewide prosecutor shall take action, within
718 60 days, to correct the record and petition the court to void
719 the order to expunge. The department shall seal the record until
720 such time as the order is voided by the court.

721 (d) On or after July 1, 1992, the department or any other
722 criminal justice agency is not required to act on an order to

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expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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750 (a) The person who is the subject of a criminal history
751 record that is expunged under this section or under other
752 provisions of law, including former s. 893.14, former s. 901.33,
753 and former s. 943.058, may lawfully deny or fail to acknowledge
754 the arrests covered by the expunged record, except when the
755 subject of the record:

756 1. Is a candidate for employment with a criminal justice
757 agency;

758 2. Is a defendant in a criminal prosecution;

759 3. Concurrently or subsequently petitions for relief under
760 this section or s. 943.059;

761 4. Is a candidate for admission to The Florida Bar;

762 5. Is seeking to be employed or licensed by or to contract
763 with the Department of Children and Family Services or the
764 Department of Juvenile Justice or to be employed or used by such
765 contractor or licensee in a sensitive position having direct
766 contact with children, the developmentally disabled, the aged,
767 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
768 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
769 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.
770 985.407, or chapter 400; ~~or~~

771 6. Is seeking to be employed or licensed by the Department
772 of Education, any district school board, any university
773 laboratory school, any charter school, any private or parochial
774 school, or any local governmental entity that licenses child
775 care facilities; or

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7. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12 or s. 311.125.

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., ~~and 6., and 7.~~ for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6., or subparagraph(a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who

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violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) STATUTORY REFERENCES.--Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 11. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a

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832 | sexual predator pursuant to s. 775.21, without regard to whether
 833 | that offense alone is sufficient to require such registration,
 834 | or for registration as a sexual offender pursuant to s.
 835 | 943.0435, may not be sealed, without regard to whether
 836 | adjudication was withheld, if the defendant was found guilty of
 837 | or pled guilty or nolo contendere to the offense, or if the
 838 | defendant, as a minor, was found to have committed or pled
 839 | guilty or nolo contendere to committing the offense as a
 840 | delinquent act. The court may only order sealing of a criminal
 841 | history record pertaining to one arrest or one incident of
 842 | alleged criminal activity, except as provided in this section.
 843 | The court may, at its sole discretion, order the sealing of a
 844 | criminal history record pertaining to more than one arrest if
 845 | the additional arrests directly relate to the original arrest.
 846 | If the court intends to order the sealing of records pertaining
 847 | to such additional arrests, such intent must be specified in the
 848 | order. A criminal justice agency may not seal any record
 849 | pertaining to such additional arrests if the order to seal does
 850 | not articulate the intention of the court to seal records
 851 | pertaining to more than one arrest. This section does not
 852 | prevent the court from ordering the sealing of only a portion of
 853 | a criminal history record pertaining to one arrest or one
 854 | incident of alleged criminal activity. Notwithstanding any law
 855 | to the contrary, a criminal justice agency may comply with laws,
 856 | court orders, and official requests of other jurisdictions
 857 | relating to sealing, correction, or confidential handling of
 858 | criminal history records or information derived therefrom. This
 859 | section does not confer any right to the sealing of any criminal

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history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each petition to a court to seal a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for sealing issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any a felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

4. Is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third

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888 degree, punishable as provided in s. 775.082, s. 775.083, or s.
889 775.084.

890 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
891 petitioning the court to seal a criminal history record, a
892 person seeking to seal a criminal history record shall apply to
893 the department for a certificate of eligibility for sealing. The
894 department shall, by rule adopted pursuant to chapter 120,
895 establish procedures pertaining to the application for and
896 issuance of certificates of eligibility for sealing. A
897 certificate of eligibility for sealing is valid for 12 months
898 after the date stamped on the certificate when issued by the
899 department. After that time, the petitioner must reapply to the
900 department for a new certificate of eligibility. Eligibility for
901 a renewed certification of eligibility must be based on the
902 status of the applicant and the law in effect at the time of the
903 most recent application. The department shall issue a
904 certificate of eligibility for sealing to a person who is the
905 subject of a criminal history record provided that such person:
906 (a) Has submitted to the department a certified copy of
907 the disposition of the charge to which the petition to seal
908 pertains.
909 (b) Remits a \$75 processing fee to the department for
910 placement in the Department of Law Enforcement Operating Trust
911 Fund, unless such fee is waived by the executive director.
912 (c) Has never, prior to the date on which the application
913 for a certificate of eligibility is filed, been adjudicated
914 guilty of a criminal offense or comparable ordinance violation,

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or been adjudicated delinquent for committing any a felony or a misdemeanor specified in s. 943.051(3)(b).

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

(e) Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058.

(f) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

(3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and to the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to

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seal to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to seal entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of any order to seal which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to seal. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to seal entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to seal when the petitioner for such order failed to obtain the

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certificate of eligibility as required by this section or when such order does not comply with the requirements of this section.

(e) An order sealing a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, or to those entities set forth in subparagraphs (a)1., 4., 5., ~~and 6.,~~ and 8. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

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999 3. Concurrently or subsequently petitions for relief under
1000 this section or s. 943.0585;
1001 4. Is a candidate for admission to The Florida Bar;
1002 5. Is seeking to be employed or licensed by or to contract
1003 with the Department of Children and Family Services or the
1004 Department of Juvenile Justice or to be employed or used by such
1005 contractor or licensee in a sensitive position having direct
1006 contact with children, the developmentally disabled, the aged,
1007 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
1008 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
1009 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and
1010 (13), s. 985.407, or chapter 400; ~~or~~
1011 6. Is seeking to be employed or licensed by the Department
1012 of Education, any district school board, any university
1013 laboratory school, any charter school, any private or parochial
1014 school, or any local governmental entity that licenses child
1015 care facilities;
1016 7. Is attempting to purchase a firearm from a licensed
1017 importer, licensed manufacturer, or licensed dealer and is
1018 subject to a criminal history background check under state or
1019 federal law; or
1020 8. Is seeking authorization from a Florida seaport
1021 identified in s. 311.09 for employment within or access to one
1022 or more of such seaports pursuant to s. 311.12 or s. 311.125.
1023 (b) Subject to the exceptions in paragraph (a), a person
1024 who has been granted a sealing under this section, former s.
1025 893.14, former s. 901.33, or former s. 943.058 may not be held
1026 under any provision of law of this state to commit perjury or to

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1027 be otherwise liable for giving a false statement by reason of
1028 such person's failure to recite or acknowledge a sealed criminal
1029 history record.

1030 (c) Information relating to the existence of a sealed
1031 criminal record provided in accordance with the provisions of
1032 paragraph (a) is confidential and exempt from the provisions of
1033 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
1034 except that the department shall disclose the sealed criminal
1035 history record to the entities set forth in subparagraphs (a)1.,
1036 4., 5., and 6., and 8. for their respective licensing, access
1037 authorization, and employment purposes. It is unlawful for any
1038 employee of an entity set forth in subparagraph (a)1.,
1039 subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6.,
1040 or subparagraph (a)8. to disclose information relating to the
1041 existence of a sealed criminal history record of a person
1042 seeking employment, access authorization, or licensure with such
1043 entity or contractor, except to the person to whom the criminal
1044 history record relates or to persons having direct
1045 responsibility for employment, access authorization, or
1046 licensure decisions. Any person who violates the provisions of
1047 this paragraph commits a misdemeanor of the first degree,
1048 punishable as provided in s. 775.082 or s. 775.083.

1049 (5) STATUTORY REFERENCES.--Any reference to any other
1050 chapter, section, or subdivision of the Florida Statutes in this
1051 section constitutes a general reference under the doctrine of
1052 incorporation by reference.

1053 Section 12. Subsection (5) of section 943.13, Florida
1054 Statutes, is amended to read:

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943.13 Officers' minimum qualifications for employment or appointment.--On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(5) Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the Criminal Justice Standards and Training Commission. If administrative delays are caused by the department or the Federal Bureau of Investigation and the person has complied with subsections (1)-(4) and (6)-(9), he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsections (1)-(4) or subsection (7), whichever occurs first. Beginning January 15, 2007, the department shall retain and enter into the statewide automated fingerprint identification system authorized by s. 943.05 all fingerprints submitted to the department as required by this section. Thereafter, the fingerprints shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide

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automated fingerprint identification system pursuant to s.
943.051. The department shall search all arrest fingerprint
cards received pursuant to s. 943.051 against the fingerprints
retained in the statewide automated fingerprint identification
system pursuant to this section and report to the employing
agency any arrest records that are identified with the retained
employee's fingerprints. By January 1, 2008, a person who must
meet minimum qualifications as provided in this section and
whose fingerprints are not retained by the department pursuant
to this section must be refingerprinted. These fingerprints must
be forwarded to the department for processing and retention.

Section 13. Section 943.1715, Florida Statutes, is amended to read:

943.1715 Basic skills training relating to diverse populations.--The commission shall establish and maintain standards for instruction of officers in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences. Every basic skills course required in order for officers to obtain initial certification must include ~~a minimum of 8 hours~~ training in interpersonal skills with diverse populations.

Section 14. Section 943.1716, Florida Statutes, is amended to read:

943.1716 Continued employment training relating to diverse populations.--The commission shall by rule require that each officer receive, as part of the 40 hours of required instruction for continued employment or appointment as an officer, ~~8 hours~~ of instruction in the subject of interpersonal skills relating

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1111 to diverse populations, with an emphasis on the awareness of
1112 cultural differences.

1113 Section 15. Section 943.2569, Florida Statutes, is
1114 repealed.

1115 Section 16. Section 943.257, Florida Statutes, is amended
1116 to read:

1117 943.257 Independent audit documentation subject to
1118 inspection.--The Criminal Justice Standards and Training
1119 Commission or a center's advisory board may inspect and copy any
1120 documents from the center as required to carry out the
1121 commission's or the respective board's oversight
1122 responsibilities, including information and documents related to
1123 applicant evaluations and center expenditures. In addition, the
1124 commission or board may inspect and copy the documentation of
1125 any internal or independent audits conducted by or on behalf of
1126 the centers to ensure that candidate and inservice officer
1127 assessments have been made and that expenditures are in
1128 conformance with the requirements of this act and with other
1129 applicable procedures.

1130 Section 17. Subsections (1) and (3) of section 943.401,
1131 Florida Statutes, are amended to read:

1132 943.401 Public assistance fraud.--

1133 (1)(a) The Department of Law Enforcement shall investigate
1134 all public assistance provided to residents of the state or
1135 provided to others by the state ~~made under the provisions of~~
1136 ~~chapter 409 or chapter 414.~~ In the course of such investigation
1137 the Department of Law Enforcement shall examine all records,
1138 including electronic benefits transfer records and make inquiry

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of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys, food stamps, or other items or benefits authorizations to recipients.

(b) All public assistance recipients, as a condition precedent to qualification for public assistance ~~under the provisions of chapter 409 or chapter 414~~, shall first give in writing, to the Agency for Health Care Administration, the Department of Health, the Agency for Workforce Innovation, and the Department of Children and Family Services, as appropriate, and to the Department of Law Enforcement, consent to make inquiry of past or present employers and records, financial or otherwise.

(3) The results of such investigation shall be reported by the Department of Law Enforcement to the appropriate legislative committees, the Agency for Health Care Administration, the Department of Health, the Agency for Workforce Innovation, and the Department of Children and Family Services, and to such others as the Department of Law Enforcement may determine.

Section 18. Authority to purchase goodwill and promotional materials.--

(1) The Legislature recognizes that the Department of Law Enforcement functions as one of the state's primary law enforcement representatives in national and international meetings, conferences, and cooperative efforts. The department often hosts delegates from other federal, state, local, and international agencies and is in a position to function as a representative of the state fostering goodwill and effective interagency working relationships. It is the intent of the

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Legislature that the department be allowed, consistent with the
dignity and integrity of the state, to purchase and distribute
material and items of collection to those with whom the
department has contact in meetings, conferences, and cooperative
efforts.

(2) In addition to expenditures separately authorized by
law, the department may expend not more than \$5,000 annually to
purchase and distribute promotional materials or items that
serve to advance with dignity and integrity the goodwill of this
state and the department and to provide basic refreshments at
official functions, seminars, or meetings of the department in
which dignitaries or representatives from the Federal
Government, other states or nationalities, or other agencies are
in attendance.

Section 19. Unauthorized use of Department of Law
Enforcement emblems or names prohibited.--

(1) Whoever, except with the written permission of the
executive director of the Department of Law Enforcement or as
otherwise expressly authorized by the department, knowingly uses
the words "Florida Department of Law Enforcement," the initials
"F.D.L.E." or "FDLE," or the words "Florida Capitol Police," or
any colorable imitation of such words or initials, or who uses a
logo or emblem used by the department in connection with any
advertisement, circular, book, pamphlet, or other publication,
play, motion picture, broadcast, telecast, or other production,
in any Internet web page or upon any product in a manner
reasonably calculated to convey the impression that such
advertisement, circular, book, pamphlet, or other publication,

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1195 play, motion picture, broadcast, telecast, or other production,
 1196 Internet web page, or product is approved, endorsed, or
 1197 authorized by the Department of Law Enforcement commits a
 1198 misdemeanor of the first degree, punishable as provided in s.
 1199 775.082 or s. 775.083, Florida Statutes.

1200 (2) A violation of this section may be enjoined upon suit
 1201 by the department or the Department of Legal Affairs upon
 1202 complaint filed in any court of competent jurisdiction.

1203 Section 20. Except as otherwise expressly provided in this
 1204 act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 151 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice Appropriations
Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Remove line(s) 425 and insert:
rule and enter the fingerprints in the statewide automated

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.2 (for drafter's use only)

Bill No. 151 CS

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal Justice Appropriations
2 Representative(s) Adams offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove line(s) 1143-1144 and insert:
6 precedent to qualification for public assistance received and as
7 defined under the provisions of chapter 409 , chapter 411 or
8 chapter 414, shall first give in
9

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. 151 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice Appropriations
Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Remove line(s) 284 and insert:
media representative; any dealer of communications services as
defined in s. 202.11; or any agency, employee, individual, or

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